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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Communications Assistance for
Law Enforcement Act

) CC Docket No. 97-213
) DA 98-762

**COMMENTS OF BELL ATLANTIC MOBILE, INC.
ON EXTENSION OF CALEA COMPLIANCE DATE**

Bell Atlantic Mobile, Inc. (BAM)¹ submits these Comments to support four petitions seeking an extension of the October 25, 1998, deadline for complying with the assistance capability requirements of the Communications Assistance for Law Enforcement Act (CALEA).² The Commission's April 20, 1998 Public Notice (DA 98-762) requested comments by May 8, 1998, on what actions the Commission can and should take in response to the petitions.

In BAM's view these petitions present three clear questions which have three equally clear answers:

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- ¹ BAM, one of the nation's largest wireless telecommunications carriers, provides cellular radiotelephone service to customers in nineteen states and the District of Columbia.
- ² Petition for Rulemaking Under Sections 107 and 109 of CALEA, filed by Center for Democracy and Technology; Petition for Rulemaking filed by Telecommunications Industry Association; Petition for Rulemaking filed by Cellular Telecommunications Industry Association; and Petition for Extension of Compliance Date filed by AT&T Wireless Services, Inc., Lucent Technologies and Ericsson Inc.

1. Should the October 1998 deadline be postponed?
The petitions make it self-evident that this deadline is infeasible and must be suspended now. There is no need to belabor this issue. Delay will only consume resources of the Commission and carriers without justification.
2. Can the Commission postpone the deadline for all telecommunications carriers? CALEA permits such industry-wide action through a single Commission order. This will also eliminate the burden on carriers and the Commission of filing and acting on individual requests.
3. How long should the compliance date be deferred?
The only proper course of action is to suspend the date until after the disputes over capability requirements are resolved. The Commission can then set an appropriate new deadline.

1. The October 1998 Deadline is Unachievable and Must Be Changed.

Section 111(b) of CALEA provides that the assistance capability requirements of Section 103 take effect four years after CALEA's enactment, i.e., October 25, 1998. Congress recognized, however, that difficulties over establishing the precise standards for carriers to provide such capability in accordance with Section 103's requirements might require changes to that date. Congress gave the Commission the responsibility to address those difficulties and their impact on the ability of carriers to meet the original date. Section 107 of CALEA thus contains several provisions which authorize the Commission to extend Section 111's deadline.

There can be no question that the October 1998 date is clearly unachievable, and the Commission should make that finding now, without further delay. Because

of the time that was required to develop an industry-wide voluntary capability standard (caused in large part by the FBI's intervention in what was to have been an industry process), and the FBI's continuing refusal to accept that standard, vendors who would supply CALEA-compliant equipment to BAM and other carriers are unable to do so. Petitioners explain why it is infeasible for vendors to make equipment available until after the fundamental disputes over what Section 103 requires are resolved. Because, however, the FBI did not submit its own petition claiming the industry standard was deficient for more than three months after the standard was adopted, the Commission has only recently begun to consider those disputes.

Telecommunications carriers, of course, cannot deploy equipment that does not yet exist. They depend on vendors to manufacture and supply that equipment, and those vendors will not be able to meet the deadline. Compliance for wireless carriers will require major modifications to their switches and other equipment. In addition, many of the FBI's demands for additional capability concern wireless features, such as tracking the location of parties to a call, that pose substantial technical as well as legal issues for wireless carriers in particular. Until these issues are resolved, there is no feasible way for wireless carriers to meet the deadline because the equipment they need is not even available.

BAM's own situation illustrates why the deadline clearly must be suspended indefinitely. Its wireless network switches are principally supplied and upgraded by Lucent Technologies. Lucent has advised BAM that it is unable to supply

equipment prior to October 25, 1998. It has advised the Commission of this fact as well, stating that it will not have "CALEA-compliant technology available within the compliance period or for up to two years thereafter." AT&T-Lucent-Ericsson Petition at 9. BAM's other supplier of switching equipment, Motorola, has also advised BAM that it will not be able to supply new equipment by October 25. Neither Lucent nor Motorola have given BAM a date by which time compliant equipment will be available for deployment throughout BAM's wireless systems.

CALEA contemplates this problem and provides the Commission with ample authority to address it by postponing the capability compliance date. The Commission clearly must do so here. No harm will result. BAM and other carriers continue to respond to and accommodate law enforcement's requests for electronic surveillance. The only remaining issues are whether industry-wide relief should be granted and what the new date should be. There are equally clear answers to these issues.

2. *The Commission can, and should, take industry-wide action.* While the FBI has not claimed that any carrier can meet the October 1998 deadline, it has argued that each carrier must nonetheless submit its own petition for an extension of that deadline under Section 107(c) of CALEA. This would require each of hundreds of carriers to show that compliance is not reasonably achievable, and would require the Commission to write hundreds of individualized determinations. The FBI is incorrect. Nothing in CALEA requires individual carrier showings, or so limits the Commission's authority.

Section 107(b) of CALEA expressly authorizes the Commission to grant broad relief that is not confined to individualized, case-by-case actions on petitions. That provision permits any party to challenge assistance capability standards adopted by industry associations or standard-setting organizations, and to petition for rules that, inter alia, “provide a reasonable time and conditions for compliance with and the transition to any news standard, including defining the obligations of telecommunications carriers under section 103 during any transition period.” The petition of the Center for Democracy and Technology (CDT) was filed pursuant to Section 107(b), and requests precisely this relief. CDT argues that the voluntary industry standard adopted by the Telecommunications Industry Association (TIA) exceeds the capability requirements of Section 103, fails to balance the law enforcement and privacy concerns of CALEA, and should be changed. CDT asks that the October 1998 date be suspended on an industry-wide basis while its Section 107(b) petition is considered.

The Commission thus has before it a petition which specifically requests that it suspend the deadline generally, for all affected parties. Section 107(b) supplies the Commission with ample authority to grant that relief. It clearly should do so. As explained above, the factual record already before the Commission shows that such general relief is clearly warranted because vendors themselves cannot meet the deadline.

Requiring individual petitions would, moreover, burden carriers by requiring each of them to submit a request. This would be nonsensical given the realities of

the market for wireless telecommunications switching equipment. Wireless carriers are dependent on a small number of vendors for such equipment. Given that there are few vendors who will design and manufacture CALEA-compliant equipment, individual carrier petitions would necessarily be repetitive. BAM, for example, buys switch-related equipment from the same vendors as many other wireless carriers. It makes no sense for BAM and each of those other carriers to file and prosecute separate petitions which would be based on the same facts. In addition, the Commission would have to devote scarce staff resources to acting on literally hundreds of individual petitions. Such an approach would defy common sense and would serve no conceivable purpose given the situation all carriers now face.

3. *The Commission Should Suspend the Compliance Date While It Resolves Capability Issues, Then Set a New Date.* Petitioners argue that, given the fundamental disputes over the scope of Section 103, the Commission must suspend that date while it considers and resolves those disputes. BAM agrees. There is no conceivable way for the Commission to select a substitute date at this time. Equipment vendors have advised the Commission that they cannot make necessary equipment available to carriers until after the disputes over capability requirements are resolved. That process may take many months, and the Commission cannot state today when it will be completed. Even after the Commission resolves the issues raised by CDT, the FBI and others as to the scope of Section 103's requirements, TIA may in response decide to modify the industry-wide standard. Even after any changes to the standard are made, there will still be

unavoidable lead times required for vendors to design compliant equipment, to test that equipment in the field, and to install it throughout carriers' networks. In BAM's experience those lead times often involve at least two years, experience confirmed by TIA's request that the Commission set a two-year compliance period that would begin after the disputes over Section 103 are resolved.

Given these variables, it would be arbitrary as well as a waste of Commission resources to try and calculate a specific new assistance capability compliance date at this time. The proper course is for the Commission first to decide what capability assistance Section 103 requires carriers to provide, and then to determine how long carriers should have to comply thereafter. The urgent matter at hand is simply to suspend the deadline. BAM urges the Commission do just that, and do so now.

Respectfully submitted,

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Dated: May 8, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of May, 1998, caused copies of the foregoing "Comments of Bell Atlantic Mobile, Inc. on Extension of CALEA Compliance Date" to be sent by first-class mail, postage prepaid, to the following parties:

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